

In re) Fair Hearing No. 10,416
)
Appeal of)

The petitioner, who is a minor, appeals the Department of Social Welfare's denial of ANFC and Food Stamp benefits to her and her baby. The issue is whether the Department correctly deemed the petitioner's mother's (the baby's grandmother's) income available to her and her baby.

1. The petitioner is a sixteen-year-old who has a newborn child. She lives with her forty-year-old mother but does not attend school. There is no one else living in the household. The only income the petitioner has is small, sporadic amounts from baby-sitting jobs. She and her mother usually purchase their food together and sometimes eat their meals together.

2. On February 10, 1991, the petitioner applied for ANFC, Food Stamps and Medicaid for herself and her five day old baby. (She herself was already receiving Medicaid). Because her mother lives in the same household, she was asked to and did provide her mother's gross income figure from wages which is \$1,347.20 per month.

3. The Department determined that \$621.00 of the

petitioner's mother's income would be found to be available for her support for ANFC eligibility purposes. That figure was arrived at by deducting from the \$1,347.20 gross income figure a \$90.00 standard deduction, \$300.00 as a monthly shelter allowance and \$336.00 for the mother's basic monthly needs.

4. For Food Stamp purposes, the Department considered all three to be part of the same household and found their total gross income, \$1,347.20, to be over the maximum limit for three people.

5. On March 14, 1991, the petitioner was sent a notice telling her that she was ineligible for ANFC and Food Stamp benefits because her income is more than allowed for a family (or household) of her size. She was advised that she and her child were found eligible for Medicaid.¹

6. The petitioner called to appeal the various denials for herself and her child claiming that her mother's income should not be found to be available to her child.

ORDER

The Department's decision is affirmed.

REASONS

The Food Stamp regulations require that the income, including all wages, of the "household" shall be included when determining eligibility. F.S.M. § 273.9(b) Under the regulations, a household is a group of individuals who "live together and customarily purchase food and prepare meals

together for home consumption." F.S.M. § 273.1(a). Even if the individuals do not customarily purchase or eat food together, the regulations will consider that they do so if the individuals claiming separate household status are "children under 18 years of age under the parental control of an adult household member" or parents living with their children, unless the parent is elderly or disabled or unless the children themselves are adults who have their own minor children. F.S.M. § 273.1(a)(2)(i)(B) and (C)

Under the above regulations, the Department was obliged to consider the petitioner, who is herself a minor child, her mother, and her own infant as one household since they all live together. The petitioner made no allegation that the regulations should not apply to her because she is an emancipated child. She could hardly do so as the facts show that she is totally dependent on her own parent for support.

Under the Department's regulations, a family must pass the gross income test before any deductions are applied, in order to determine whether they are eligible (as opposed to the amount they might receive.) F.S.M. § 273.9(a). The gross eligibility test is set out at P-2590C which provides that a family of three without an elderly or disabled member cannot have a maximum gross monthly level over \$1,144.00 (130% of the poverty level) to be eligible. Therefore, the Department's determination that the household is over income for Food Stamp purposes is correct.

The ANFC regulations require that certain persons be considered together as an "assistance group" for purposes of determining need for ANFC. The regulations state specifically that "the parent(s) of each and every child included in the ANFC assistance group must also be included in the ANFC assistance group if he or she lives in the home with the children." W.A.M. § 2242. See also W.A.M. § 2242.2 The regulations specifically address the parents of minor parents as follows:

Minor Parents

In determining eligibility and amount of benefits for minor parents, the income of the minor parent's own parent(s) (referred to for clarity as grandparent(s) below) living in the same home with the minor parent, must be taken into consideration with the following disregards:

- The Standard Employment Expense Deduction (see WAM 2253.3) for each employed grandparent or the amount of earned income of the employed grandparent, whichever is less. In no case can the amount of the Standard Employment Expense Deduction for an employed grandparent exceed the amount of his or her gross earned income or for a self-employed grandparent the gross earned income less allowable business expenses.
- All payments by such grandparent(s) of alimony or child support for individuals not living in the household;
- An amount equal to the State's need standard including the allowable housing allowance for an assistance group size which includes the grandparent(s) and any other individuals in the household who are or could be claimed as dependents for income tax purposes by the grandparent(s) but excluding anyone included in the minor parent's ANFC assistance group.
- Amounts paid by the grandparent(s) to individuals not living in the house but who are or could be claimed by the grandparent(s) as dependents for

income tax purposes.

These regulations require the Department to "deem" income to the minor child who is herself a parent but allow self-support deductions for the minor child's parent before the deeming is made.

The petitioner here does not dispute the amount of the self-support disregards used for calculating her mother's ability to support her but instead disputes the Department's authority to require her mother to support her infant. The petitioner is certainly correct about the effect of the regulation. Her mother will be supporting both of them. But in strict legal terms, her mother is really only being required to allocate certain sums to her own child. The Department then takes that sum and determines whether the petitioner herself has sufficient resources through her own allocation, to provide for the needs of her child. This methodology is specifically required by the so-called DEFRA amendments to the Social Security Act, codified at 42 U.S.C. § 602(a)(38) and (39) and by the corresponding federal regulations at 45 C.F.R. § 233.20(a)(B)(vi)

In the petitioner's case, the Department after disregarding the self-support amount, determined that \$621.00 was available to the minor petitioner to meet her needs. The ANFC regulations allow a maximum of \$456.72 for a two person family with the petitioner's housing needs (part of the mother's housing cost was pro-rated and attributed to her) P-2210. Therefore, the Department's

determination that neither the petitioner nor her child is eligible for ANFC conforms with the regulations and should be upheld by the Board. 3 V.S.A. § 3091(d)

FOOTNOTES

¹During the hearing, the Department's worker testified on direct examination that the petitioner's baby only been found eligible for Medicaid and that the mother was Medicaid eligible for extended coverage only. As the notice itself did not state that, the petitioner may still have a right to appeal that limited coverage. Presumably she will get a further notice if, and when, she is actually terminated.

#